

# OFFICIAL CODE OF GEORGIA ANNOTATED

Current Through the 2008 Regular Session  
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## CHAPTER 5 PROTECTION OF DISABLED ADULTS AND ELDER PERSONS

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**Cross references.** - Residential care facilities for the elderly authorities, Art. 5, Ch. 7, T. 31.

### RESEARCH REFERENCES

**Am. Jur. 2d.** - 40A Am. Jur. 2d., Hospitals and Asylums, 36.

Wrongful Confinement to a Mental Health or Developmental Disabilities, 44 POF3d 217.

Proof of Abuse, Neglect or Exploitation of Older Persons, 53 POF3d 1.

### **30-5-1. Short title.**

This chapter shall be known and may be cited as the "Disabled Adults and Elder Persons Protection Act."

(Ga. L. 1981, p. 1320, 1; Ga. L. 1997, p. 700, 2.)

## **RESEARCH REFERENCES**

**ALR.** - Validity, construction, and application of state civil and criminal elder abuse laws, 113 ALR5th 431.

Remedies available under Americans with Disabilities Act (42 USCS 12101 et seq.), 136 ALR Fed 63.

To what extent are federal entities subject to suit under 504(a) of Rehabilitation Act (29 USCA 794(a)), which prohibits any program or activity conducted by any executive agency or the postal service from discriminating on basis of disability, 146 ALR Fed. 319.

When is individual regarded as having or perceived to have impairment within meaning of Americans with Disabilities Act (42 USCA 12102(2)(c)), 148 ALR Fed. 305.

When does a public entity discriminate against individuals in its provision of services, programs, or activities under the Americans with Disabilities Act, 42 USCA 12132, 163 ALR Fed. 339.

### **30-5-2. Legislative purpose.**

The purpose of this chapter is to provide protective services for abused, neglected, or exploited disabled adults and elder persons. It is not the purpose of this chapter to place restrictions upon the personal liberty of disabled adults or elder persons, but this chapter should be liberally construed to assure the availability of protective services to all disabled adults and elder persons in need of them.

(Ga. L. 1981, p. 1320, 2; Ga. L. 1997, p. 700, 2.)

**Cross references.** - Rights of persons residing in long-term care facilities generally, [31-8-100](#) et seq.

### **30-5-3. Definitions.**

As used in this chapter, the term:

(1) "Abuse" means the willful infliction of physical pain, physical injury, mental anguish, unreasonable confinement, or the willful deprivation of essential services to a disabled adult or elder person.

(2) "Caretaker" means a person who has the responsibility for the care of a disabled adult or elder person as a result of family relationship, contract, voluntary assumption of that responsibility, or by operation of law.

(3) "Court" means the probate court for the county of residence of the disabled adult or elder person or the county in which such person is found. In any case in which the judge of the probate court is unable to hear a case brought under this chapter within the time required for such hearing, such judge shall appoint a person to serve and exercise all the jurisdiction of the probate court in such case. Any person so appointed shall be a member of the State Bar of Georgia and be otherwise qualified for his or her duties by training and experience. Such appointment may be made on a case-by-case basis or by making a standing appointment of one or more persons. Any person receiving such standing appointment shall serve at the pleasure of the judge making the appointment or said judge's successor in office to hear such cases if and when necessary. The compensation of a person so appointed shall be as agreed upon by the judge who makes the appointment and the person appointed, with the approval of the governing authority of the county for which such person is appointed, and shall be paid from the county funds of such county. All fees collected for the services of such appointed person shall be paid into the general funds of the county served.

(4) "Department" means the Department of Human Services.

(5) "Director" means the director of the Division of Aging Services of the Department of Human Services, or the director's designee.

(6) "Disabled adult in need of protective services" means a disabled adult who is subject to abuse, neglect, or exploitation as a result of that adult's mental or physical incapacity.

(7) "Disabled adult in need of protective services" means a disabled adult who is subject to abuse, neglect, or exploitation as a result of that adult's mental or physical incapacity.

(7.1) "Elder person" means a person 65 years of age or older who is not a resident of a long-term care facility as defined in Article 4 of [Chapter 8](#) of [Title 31](#).

(8) "Essential services" means social, medical, psychiatric, or legal services necessary to safeguard the disabled adult's or elder person's rights and resources and to maintain the physical and mental well-being of such person. These services shall include, but not be limited to, the provision of medical care for physical and mental health needs, assistance in personal hygiene, food, clothing, adequately heated and ventilated shelter, and protection from health and safety hazards but shall not include the taking into physical custody of a disabled adult or elder person without that person's consent.

(9) "Exploitation" means the illegal or improper use of a disabled adult or elder person or that person's resources through undue influence, coercion, harassment, duress, deception, false representation, false pretense, or other similar means for another's profit or advantage.

(10) "Neglect" means the absence or omission of essential services to the degree that it harms or threatens with harm the physical or emotional health of a disabled adult or elder person.

(11) "Protective services" means services necessary to protect a disabled adult or elder person from abuse, neglect, or exploitation. Such services shall include, but not be

limited to, evaluation of the need for services and mobilization of essential services on behalf of a disabled adult or elder person.

**HISTORY:** Ga. L. 1981, p. 1320, § 3; Ga. L. 1997, p. 700, § 2; Ga. L. 2000, p. 136, § 30; Ga. L. 2005, p. 509, § 6/HB 394; Ga. L. 2007, p. 219, § 1/HB 233; Ga. L. 2009, p. 453, § 2-2/HB 228; Ga. L. 2009, p. 725, § 1/HB 457.

**The 2005 amendment**, effective July 1, 2005, rewrote paragraph (5) which read: "Director' means the director of the county department of family and children services, or the director's designee, in the county in which the disabled adult or elder person resides or is present."

**The 2007 amendment**, effective July 1, 2007, inserted "through undue influence, coercion, harassment, duress, deception, false representation, false pretense, or other similar means" in paragraph (9).

### **JUDICIAL DECISIONS**

**Evidence sufficient for conviction.** - Evidence was sufficient to support the defendant's convictions for unlawful abuse, neglect, or exploitation of an elder person and unauthorized practice of law, in violation of O.C.G.A. [15-19-51\(a\)\(7\)](#) and [30-5-8\(a\)\(1\)](#), because the defendant befriended an 89-year-old widower, falsified identification as an attorney, and eventually obtained the widower's car, jewelry, use of the widower's credit cards for unauthorized purposes, and the defendant also forged documents and coerced the widower into changing other documents regarding the widower's estate; the widower was within the definition of "elder person" under O.C.G.A. [30-5-3\(7.1\)](#), and the acts were within the definition of "exploitation" pursuant to [30-5-3\(9\)](#). *Marks v. State*, [280 Ga. 70](#), [623 S.E.2d 504](#) (2005).

**Construction with other law.** - In a wrongful death action filed by a decedent-lessee's administrator in which the decedent was killed when crossing a public highway that the lessor did not control, the lessor was properly granted summary judgment, as the administrator failed to show that the lessor was negligent per se, violated O.C.G.A. [30-5-8](#), or that the lessor breached either a common law or private duty owed to the lessee. *Walton v. UCC X, Inc.*, [282 Ga. App. 847](#), [640 S.E.2d 325](#) (2006).

### **30-5-4. Reporting of need for protective services; manner and contents of report; immunity from civil or criminal liability.**

(a)(1)(A) Any physician, osteopath, intern, resident, other hospital or medical personnel, dentist, psychologist, chiropractor, podiatrist, pharmacist, physical therapist, occupational therapist, licensed professional counselor, nursing personnel, social work personnel, day-care personnel, coroner, medical examiner, employee of a public or private agency engaged in professional health related services to elder persons or disabled adults, or law enforcement personnel having reasonable cause to believe that a disabled adult or elder person has had a physical injury or injuries inflicted upon such disabled adult or elder person, other than by accidental means, or has been neglected or exploited shall report or cause reports to be made in accordance with the provisions of this Code section.

(B) Except as provided in this paragraph, any employee of a financial institution, as defined in Code [Section 7-1-4](#), having reasonable cause to believe that a disabled adult or elder person has been exploited shall report or cause reports to be made in accordance

with the provisions of this Code section; provided, however, that this obligation shall not apply to any employee of a financial institution while that employee is acting as a fiduciary, as defined in Code [Section 7-1-4](#), but only for such assets that the employee is holding or managing in a fiduciary capacity.

(C) When the person having a reasonable cause to believe that a disabled adult or elder person is in need of protective services performs services as a member of the staff of a hospital, social agency, financial institution, or similar facility, such person shall notify the person in charge of the facility and such person or that person's designee shall report or cause reports to be made in accordance with the provisions of this Code section.

(2) Any other person having a reasonable cause to believe that a disabled adult or elder person is in need of protective services, or has been the victim of abuse, neglect, or exploitation may report such information as provided in this Code section.

(b)(1) A report that a disabled adult or elder person who is not a resident of a long-term care facility as defined in Code [Section 31-8-80](#) is in need of protective services or has been the victim of abuse, neglect, or exploitation shall be made to an adult protection agency providing protective services, as designated by the department or, if such agency is unavailable, to an appropriate law enforcement agency or prosecuting attorney. If a report of a disabled adult or elder person abuse is made to an adult protection agency or independently discovered by the agency and the agency has reasonable cause to believe such report is true, then the agency shall immediately notify the appropriate law enforcement agency or prosecuting attorney. If the disabled adult or elder person is a resident of a long-term care facility as defined in Code [Section 31-8-80](#), a report shall be made in accordance with Article 4 of [Chapter 8](#) of [Title 31](#). If a report made in accordance with the provisions of this Code section alleges that the abuse or exploitation occurred within a long-term care facility, such report shall be investigated in accordance with Articles 3 and 4 of [Chapter 8](#) of [Title 31](#).

(2) The report may be made by oral or written communication. The report shall include the name and address of the disabled adult or elder person and should include the name and address of the disabled adult's or elder person's caretaker, the age of the disabled adult or elder person, the nature and extent of the disabled adult's or elder person's injury or condition resulting from abuse, exploitation, or neglect, and other pertinent information. All such reports prepared by a law enforcement agency shall be forwarded to the director within 24 hours.

(c) Anyone who makes a report pursuant to this chapter, who testifies in any judicial proceeding arising from the report, who provides protective services, or who participates in a required investigation under the provisions of this chapter shall be immune from any civil or criminal liability on account of such report or testimony or participation, unless such person acted in bad faith, with a malicious purpose, or was a party to such crime or fraud. Any financial institution, as defined in Code [Section 7-1-4](#), including without limitation officers and directors thereof, that is an employer of anyone who makes a report pursuant to this chapter in his or her capacity as an employee, or who testifies in any judicial proceeding arising from a report made in his or her capacity as an employee, or who participates in a required investigation under the provisions of this chapter in his or her capacity as an employee, shall be immune from any civil or criminal liability on

account of such report or testimony or participation of its employee, unless such financial institution knew or should have known that the employee acted in bad faith or with a malicious purpose and failed to take reasonable and available measures to prevent such employee from acting in bad faith or with a malicious purpose. The immunity described in this subsection shall apply not only with respect to the acts of making a report, testifying in a judicial proceeding arising from a report, providing protective services, or participating in a required investigation but also shall apply with respect to the content of the information communicated in such acts.

(Ga. L. 1981, p. 1320, 4; Ga. L. 1984, p. 785, 1; Ga. L. 1992, p. 6, 30; Ga. L. 1996, p. 1608, 1; Ga. L. 1997, p. 700, 2; Ga. L. 2000, p. 1085, 6.)

**Cross references.** - Reporting of abuse or exploitation of residents of long-term care facilities, [31-8-80](#) et seq.

**Code Commission notes.** - Pursuant to Code [Section 28-9-5](#), in 1997, a comma was deleted following "investigation" in the last sentence of subsection (c).

**Editor's notes.** - Ga. L. 2000, p. 1085, 1, not codified by the General Assembly, provides: "This Act shall be known and may be cited as the 'Georgia Protection of Elder Persons Act of 2000'."

**Law reviews.** - For note on 2000 amendment of O.C.G.A. [30-5-4](#), see 17 Ga. St. U.L. Rev. 93 (2000).

### **30-5-5. Investigation of reports of need for protective services; interference with investigation; provision of protective services.**

(a) When the director receives a report that a disabled adult or elder person is in need of protective services, he or she shall conduct or have conducted a prompt and thorough investigation to determine whether the disabled adult or elder person is in need of protective services and what services are needed. The investigation shall include a visit to the person and consultation with others having knowledge of the facts of the particular case. Within ten days after receipt of the report, the director shall acknowledge receipt of the report, in writing, to the person making the report.

(b) Any person conducting an investigation required by this Code section who is unable to gain access to the disabled adult or elder person as a result of interference by another person may petition the court for an order authorizing the investigation and prohibiting interference therewith, which petition shall allege specific facts in support thereof. A hearing upon such petition and notice thereof shall be carried out pursuant to subsection (f) of this Code section. If as a result of the hearing the court finds probable cause to believe that the person named in the petition is a disabled adult in need of protective services or an elder person needing protective services and that any other person is interfering with the conduct of an investigation required under this Code section, the court may issue an order authorizing that investigation and prohibiting interference therewith by any person.

(c) If as a result of an investigation conducted under this chapter the director determines that a disabled adult or elder person is in need of protective services, the director shall immediately provide or arrange for protective services for any disabled adult or elder person who consents thereto.

(d) Any person providing protective services as authorized by subsection (c) of this Code section who determines that another person is interfering with the provision of such services may petition the court for an order authorizing such services and prohibiting interference therewith. Such petition shall allege specific facts in support thereof, including, but not limited to, the results of any investigation required to be made under this chapter. A hearing upon such petition and notice thereof shall be carried out pursuant to subsection (f) of this Code section. If as a result of the hearing the court finds by clear and convincing evidence that the person named in the petition is a disabled adult in need of protective services or an elder person needing protective services and that any other person is interfering with the provision of such services, the court may issue an order authorizing the provision of such services and prohibiting the interference therewith by any person.

(e) Protective services may not be provided under this chapter to any person who does not consent to such services or who, having consented, withdraws such consent. Nothing in this chapter shall prohibit the department from petitioning for the appointment of a guardian for a disabled adult or elder person pursuant to Chapters 4 and 5 of [Title 29](#).

(f) A hearing on any petition filed under this Code section shall be held no sooner than five and no later than ten days after such petition is filed, unless a continuance is granted. At least three days prior to such hearing, notice thereof shall be served on the petitioner and notice and copy of the petition shall be served on the person alleged to be a disabled adult in need of protective services or an elder person needing protective services and on such person or persons named in the petition as interfering with the investigation or with the provision of protective services, as applicable. Notice shall be served either in person or by first-class mail. Any person willfully violating any order issued pursuant to this Code section shall be in contempt of the court issuing such order and may be punished accordingly by the judge of that court.

(g) The expenses of the court and the hearing officer for any hearing conducted under this Code section shall be the same as those provided in Code [Section 37-3-122](#) and shall be paid as provided therein. A disabled adult or elder person shall be deemed to be a patient under Code [Section 37-3-122](#) only for purposes of determining hearing expenses thereunder. Nothing in this Code section shall authorize the payment of attorney's fees for any hearing conducted under this Code section.

(h) Notwithstanding any other provisions of this Code section, if the director or adult protection agency employee receives a report or gains knowledge that a disabled adult or elder person is in need of protective services and such disabled adult or elder person may be in imminent danger resulting from abuse, exploitation, or neglect, the director or designee of the director may file a petition with the probate or superior court stating the grounds on which the director or designee of the director believes that the disabled adult or elder person may be in imminent danger and seeking immediate access to such person. The judge, in his or her discretion, may issue an ex parte order requiring the caretaker or any other person at the place where the disabled adult or elder person resides to afford an adult protection agency employee immediate access to such person to determine the person's well-being. If the adult protection agency employee is denied access to the disabled adult or elder person, the employee shall contact immediately a law enforcement officer to assist the employee in enforcing such order. Any person willfully violating any

order issued pursuant to this subsection shall be in contempt of the court issuing such order and may be punished accordingly by the judge of the court. The adult protection agency employee shall conduct a brief investigation to determine the condition of the disabled adult or elder person.

(Ga. L. 1981, p. 1320, 5; Ga. L. 1984, p. 785, 2; Ga. L. 1985, p. 149, 30; Ga. L. 1997, p. 700, 2; Ga. L. 1999, p. 562, 6; Ga. L. 2004, p. 161, 6; Ga. L. 2005, p. 509, 7/HB 394.)

**The 2005 amendment**, effective July 1, 2005, in the first sentence of subsection (a), substituted "When the director receives" for "Any director receiving", and inserted ", he or she" preceding "shall conduct"; and substituted "if the director" for "if any director" near the beginning of the first sentence of subsection (h).

**Cross references.** - Reporting of abuse or exploitation of residents of long-term care facilities, [31-8-80](#) et seq.

**Code Commission notes.** - Pursuant to Code [Section 28-9-5](#), in 1999, "subsection" was substituted for "paragraph" in subsection (h).

**Editor's notes.** - Ga. L. 1999, p. 562, 1, not codified by the General Assembly, provides: "This Act shall be known and may be cited as the 'Crimes Against Elderly Act of 1999'."

### **30-5-6. Cooperation of other public agencies with director; power of director to contract for provision of medical evaluations; regulations.**

(a) The staff and physicians of local health departments, mental health clinics, and other public agencies shall cooperate fully with the director in the performance of the director's duties under this chapter.

(b) The director may contract with an agency or private physician for the purpose of providing immediate accessible medical evaluations in the location that the director deems most appropriate.

(c) The Board of Human Services shall adopt regulations to ensure the effective implementation of this chapter.

(Ga. L. 1981, p. 1320, 6; Ga. L. 1997, p. 700, 2.)

### **30-5-7. Confidentiality of public records.**

#### **§ 30-5-7. Confidentiality of public records**

All records pertaining to the abuse, neglect, or exploitation of disabled adults or elder persons in the custody of the department shall be confidential; and access thereto by persons other than the department, the director, or the district attorney shall only be by valid subpoena or order of any court of competent jurisdiction. Nothing in this Code section shall be construed to deny state agencies participating in joint investigations at the request of and with the department or to deny law enforcement personnel who are conducting an investigation into any criminal offense in which an elder person is a victim from having access to such records.

**HISTORY:** Ga. L. 1981, p. 1320, § 7; Ga. L. 1997, p. 700, § 2; Ga. L. 1999, p. 562, § 7; Ga. L. 2009, p. 453, § 2-14/HB 228.

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### **30-5-8. Criminal offenses and penalties.**

(a) (1) In addition to any other provision of law, the abuse, neglect, or exploitation of any disabled adult or elder person shall be unlawful.

(2) In addition to any other provision of law, it shall be unlawful for a person to act with the specific intent to abuse, neglect, or commit exploitation of any disabled adult. For purposes of this paragraph only, the term 'disabled adult' means a person 18 years of age or older who is:

(A) A resident of a long-term care facility, as defined in Article 4 of Chapter 8 of Title 31; and

(B) Mentally or physically incapacitated or has Alzheimer's disease, as defined in Code Section 31-8-180, or dementia, as defined in Code Section 49-6-72. An owner, officer, administrator, or board member of a long-term care facility shall not be held criminally liable for the actions of a person who is convicted pursuant to this paragraph. Nothing in this paragraph shall be construed to preempt any other law or to deny to any individual any rights or remedies which are provided under any other law.

(3) Except as otherwise provided in Title 16, any person violating the provisions of this subsection shall be guilty of a felony and, upon conviction, shall be punished by imprisonment for not less than one nor more than five years.

(b) (1) It shall be unlawful for any person or official required by paragraph (1) of subsection (a) of Code Section 30-5-4 to report a case of disabled adult or elder person abuse to fail knowingly and willfully to make such report.

(2) Any person violating the provisions of this subsection shall be guilty of a misdemeanor.

(c) Any violation of this Code section shall constitute a separate offense.

**HISTORY:** Code 1981, § 30-5-8, enacted by Ga. L. 1984, p. 785, § 3; Ga. L. 1997, p. 700, § 2; Ga. L. 1999, p. 562, § 8; Ga. L. 2001, p. 484, § 1; Ga. L. 2003, p. 298, § 1A; Ga. L. 2007, p. 219, § 2/HB 233; Ga. L. 2009, p. 725, § 2/HB 457.

### **JUDICIAL DECISIONS**

**Evidence sufficient for conviction.** - Evidence was sufficient to support the defendant's convictions for unlawful abuse, neglect, or exploitation of an elder person and unauthorized

practice of law, in violation of O.C.G.A. [15-19-51\(a\)\(7\)](#) and [30-5-8\(a\)\(1\)](#), because the defendant befriended an 89-year-old widower, falsified identification as an attorney, and eventually obtained the widower's car, jewelry, use of the widower's credit cards for unauthorized purposes, and the defendant also forged documents and coerced the widower into changing other documents regarding the widower's estate; the widower was within the definition of "elder person" under O.C.G.A. [30-5-3\(7.1\)](#), and the acts were within the definition of "exploitation" pursuant to [30-5-3\(9\)](#). *Marks v. State*, [280 Ga. 70, 623 S.E.2d 504](#) (2005).

**Construction with other law.** - In a wrongful death action filed by a decedent-lessee's administrator in which the decedent was killed when crossing a public highway that the lessor did not control, the lessor was properly granted summary judgment, as the administrator failed to show that the lessor was negligent per se, violated O.C.G.A. [30-5-8](#), or that the lessor breached either a common law or private duty owed to the lessee. *Walton v. UCC X, Inc.*, [282 Ga. App. 847, 640 S.E.2d 325](#) (2006).

## OPINIONS OF THE ATTORNEY GENERAL

**Fingerprintable offenses.** - Violations of O.C.G.A. [30-5-8\(a\)\(1\)](#) and (b)(1) are designated as offenses for which those charged are to be fingerprinted. 1999 Op. Att'y Gen. No. [99-17](#).

## RESEARCH REFERENCES

**ALR.** - Validity, construction, and application of state civil and criminal elder abuse laws, 113 ALR5th 431.

### **30-5-9. Applicability to employment relationship.**

Nothing in this chapter shall be construed to limit the application of Code [Section 34-7-1](#) to the employment relationship between a disabled adult or elder person and his or her employer or to create a new cause of action as a result of the employment relationship.

(Code 1981, 30-5-9, enacted by Ga. L. 1997, p. 700, 2.)

### **30-5-10. Cooperative effort in development of programs relating to abuse and exploitation of persons 65 years of age or older.**

The Department of Human Services, the Georgia Peace Officer Standards and Training Council, the Prosecuting Attorneys' Council of the State of Georgia, and the Institute of Continuing Judicial Education shall develop programs for the education and training of social services, criminal justice, and judicial professionals concerning the abuse and exploitation of persons who are 65 years of age or older. Said agencies, together with any other agency of this state which is involved in the investigation of the abuse or exploitation of persons who are 65 years of age or older, are directed to cooperate in the development of such training programs to the extent allowable under Article I, Section II, Paragraph III of the Constitution of this state.

(Code 1981, 30-5-10, enacted by Ga. L. 2000, p. 1085, 7.)

**Code Commission notes.** - Pursuant to Code [Section 28-9-5](#), in 2000, "Officer" was substituted for "Officers" in the first sentence.

**Editor's notes.** - Ga. L. 2000, p. 1085, 1, not codified by the General Assembly, provides: "This Act shall be known and may be cited as the 'Georgia Protection of Elder Persons Act of 2000'."

**Law reviews.** - For note on 2000 enactment of O.C.G.A. [30-5-10](#), see 17 Ga. St. U.L. Rev. 93 (2000).